

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CINDY BARBERA,
CARLENE BECHEN, RONALD BIENDSEIL,
RON BOONE, VERA BOONE, ELVIRA
BUMPUS, EVANJELINA CLEEREMAN,
SHEILA COCHRAN, LESLIE W. DAVIS III,
BRETT ECKSTEIN, MAXINE HOUGH,
CLARENCE JOHNSON, RICHARD KRESBACH,
RICHARD LANGE, GLADYS MANZANET,
ROCHELLE MOORE, AMY RISSEEUW, JUDY
ROBSON, GLORIA ROGERS, JEANNE
SANCHEZ-BELL, CECELIA SCHLIEPP,
TRAVIS THYSEN,¹

Civil Action
File No. 11-cv-562

Three-judge panel
28 U.S.C. § 2284

Plaintiffs,

v.

Members of the Wisconsin Government
Accountability Board, each only in his official
capacity: MICHAEL BRENNAN, DAVID
DEININGER, GERALD NICHOL, THOMAS
CANE, THOMAS BARLAND, and TIMOTHY
VOCKE, and KEVIN KENNEDY, Director and
General Counsel for the Wisconsin Government
Accountability Board,

Defendants.

**DECLARATION OF REBECCA KATHRYN MASON
IN SUPPORT OF PLAINTIFFS' MOTION
TO COMPEL DISCLOSURE**

I, Rebecca Kathryn Mason, declare, under penalty of perjury and pursuant to 28 U.S.C.

§ 1746, that the following is true and correct:

¹ On November 18, 2011, plaintiffs filed their Second Amended complaint and a complementary Motion to Amend the Caption.

1. I am an attorney with the law firm of Godfrey & Kahn, S.C., and I am admitted to practice in the State of Wisconsin and in the U.S. District Court for the Eastern District of Wisconsin. I represent plaintiffs in the above-captioned matter.

2. At approximately 4:00 p.m. on November 16, 2011, plaintiffs and defendants simultaneously exchanged initial disclosures pursuant to Rule 26(a)(1) and this Court's November 14, 2011 Scheduling and Discovery Order. A copy of plaintiffs' initial disclosures is attached as **Exhibit A** and a copy of defendants' initial disclosures is attached as **Exhibit B**.

3. On November 17, 2011, I notified Assistant Attorney General Maria S. Lazar, counsel for defendants, by hand-delivered letter that defendants' disclosures were noncompliant. I also forwarded the letter to Ms. Lazar via e-mail. A copy of the letter is attached as **Exhibit C**.

4. In my letter, I informed Ms. Lazar that if plaintiffs did not receive adequate disclosures by 10:00 a.m. on November 21, 2011, plaintiffs would have no choice but to file a motion to compel because the Scheduling and Discovery Order required a prompt response to noncompliant discovery.

5. I spoke twice with Ms. Lazar on November 18, 2011 and again on November 21, 2011. We attempted to reach an agreement concerning defendants' non-compliance with their disclosure obligations under Rule 26(a)(1). However, we were unable to reach an agreement.

6. After we spoke on November 18, Ms. Lazar responded to my letter in an e-mail at approximately 1:50 p.m. on November 18, 2011.

7. Ms. Lazar's email addressed the information we discussed during our telephone conversations on November 18. In the e-mail Ms. Lazar explained that she represents "not the party or parties who drew this map but the" Government Accountability Board, and that "the 'state'" is not a party. Ms. Lazar further stated that defendants "are in the initial phases of discovery" and that their disclosures "were based upon the knowledge and documents in the

GAB's position or control." She stated that defendants would be "attempting to learn the names of individuals who fit the categories . . . listed" and would amend their disclosures "once we do."

Ms. Lazar reasserted these same positions during our telephone conversations on November 21.

Dated this 21st day of November, 2011.

s/ Rebecca Kathryn Mason

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EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CARLENE BECHEN, ELVIRA
BUMPUS, RONALD BIENDSEI, LESLIE W. DAVIS
III, BRETT ECKSTEIN, GEORGIA ROGERS,
RICHARD KRESBACH, ROCHELLE MOORE, AMY
RISSEEUW, JUDY ROBSON, JEANNE SANCHEZ-
BELL, CECELIA SCHLIEPP, TRAVIS THYSSEN, and
CINDY BARBERRA,

Plaintiffs,

Civil Action
File No. 11-CV-562

v.

Members of the Wisconsin Government Accountability
Board, each only in his official capacity:
MICHAEL BRENNAN, DAVID DEININGER,
GERALD NICHOL, THOMAS CANE,
THOMAS BARLAND, TIMOTHY VOCKE, and
KEVIN KENNEDY, Director and General Counsel for the
Wisconsin Government Accountability Board,

Defendants.

Three-judge panel
28 U.S.C. § 2284

PLAINTIFFS' RULE 26 DISCLOSURES

Pursuant to Federal Rules of Civil Procedure 26(a)(1) and (2) and the scheduling and
discovery stipulation between the parties, negotiated at the request of the Court and entered as an
order by the Court on November 14, 2011, plaintiffs make the following initial disclosures:

1. Rule 26(a)(1)(A)(i) - the name and address and telephone number of each
individual likely to have discoverable information that the disclosing party may use:

<i>Name/Address</i>	<i>Subject of information</i>
Hon. Peter Barca Room 201 West, State Capitol Madison, WI 53708 (608) 266-5504	Effects of redistricting/political drafting and enactment process for Acts 43/44/minority participation
Hon. Jeff Fitzgerald Room 211 West, State Capitol Madison, WI 53708 (608) 266-2540	Political drafting and enactment process for Acts 43/44
Hon. Scott Fitzgerald Room 211 South, State Capitol Madison, WI 53707-7882 (608) 266-5660	Political drafting and enactment process for Acts 43/44
Adam Foltz Room 211 West, State Capitol Madison, WI 53708 (608) 266-3387	Political drafting process for Acts 43/44—goals and factors
Joe Handrick 1000 North Water Street, Suite 1700 Milwaukee, WI 53202 (414) 298-1000	Political drafting and enactment process for Acts 43/44—goals and factors
Kevin Kennedy Government Accountability Board 212 East Washington, 3 rd Floor Madison, WI 53703 (608) 266-8005	History of redistricting/campaign and election process and deadlines/applicability of district lines
Hon. Mary Lazich Room 8 South, State Capitol Madison, WI 53707-7882 (608) 266-5400	Boundaries for recall elections
David Obey 3920 36 th Street North Arlington, VA 22207-5312 (703) 525-1694	Historical data and patterns/Congressional district constituencies/communities of interest
Tad Ottman Room 211 South, State Capitol Madison, WI 53707 (608) 266-5660	Political drafting process for Acts 43/44—goals and factors

Judy Robson
2411 East Ridge Road
Beloit, WI 53511
(608) 362-8338

Legislative districts/voting history/disenfranchisement
of state senate voters

Plaintiffs reserve the right to identify any additional witness disclosed in any of the documents produced in this litigation by defendants or third parties.

2. Rule 26(a)(1)(A)(ii) - a copy or a description of all documents that may be used to support plaintiffs' claims.

All of the documents or other materials subject to this Rule that the plaintiffs may use are public records—including census data and legislative proposals or enactments—or, if not public records, are not in plaintiffs' "possession, custody or control" and, therefore, not subject to the Rule. Rather, they are in the possession, custody or control of defendants or third parties, which are subject to the discovery process. The only exception to this disclosure is the privileged work product of plaintiffs' expert witnesses.

3. Rule 26(a)(1)(A)(iii) - a computation of each category of damages sought by the plaintiffs.

Plaintiffs do not seek monetary damages; rather, they seek only declaratory and injunctive relief and, upon the entry of an appropriate order, an award of attorneys' fees and costs pursuant to federal law.

4. Rule 26(a)(1)(A)(iv) - any insurance agreement that may be relevant.

Plaintiffs are aware of none.

5. Rule 26(a)(2) - the identity of any witnesses who may be used at trial to present evidence under Federal Rules of Evidence 702, 703 or 705.

Plaintiffs' expert witness will be Ken Mayer, 7105 Longmeadow, Madison, Wisconsin 53717. The report required by Rule 26(a)(2)(B) will be submitted pursuant to the November 14, 2011 scheduling and discovery order—that is, no later than December 14, 2012.

Plaintiffs make the Rule 26 disclosures based upon the knowledge and information now reasonably available to them. Accordingly, plaintiffs reserve the right to supplement this disclosure in accordance with the Federal Rules of Civil Procedure and the local rules of this Court, including the identification of additional witnesses and experts in response to the defendants' Rule 26 disclosures. These initial disclosures are provided without prejudice to plaintiffs' right to introduce at a hearing or at trial any evidence that is subsequently discovered.

Dated: November 16, 2011.

GODFREY & KAHN, S.C.

By:


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EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CINDY BARBERA,
CARLENE BECHEN, ELVIRA BUMPUS,
RONALD BIENDSEI, LESLIE W. DAVIS, III,
BRETT ECKSTEIN, GEORGIA ROGERS,
RICHARD KRESBACH, ROCHELLE MOORE,
AMY RISSEEUW, JUDY ROBSON, JEANNE
SANCHEZ-BELL, CECELIA SCHLIEPP, and
TRAVIS THYSSEN,

Plaintiffs,

v.

Case No. 11-C-00562
(Three Judge Panel)

Members of the Wisconsin Government
Accountability Board, each only in his official
capacity: MICHAEL BRENNAN, DAVID
DEININGER, GERALD NICHOL, THOMAS
CANE, THOMAS BARLAND, and TIMOTHY
VOCKE, and KEVIN KENNEDY, Director and
General Counsel for the Wisconsin Government
Accountability Board,

Defendants.

DEFENDANTS' INITIAL RULE 26(a) DISCLOSURES

NOW COME the defendants by their attorneys, J.B. Van Hollen, Attorney General, and
Maria S. Lazar, Assistant Attorney General, and make the following initial disclosures pursuant
to Fed. R. Civ. P. Rule 26(a)(1):

A. Individuals potentially having knowledge regarding this matter.

Defendants assert that the Government Accountability Board ("GAB") did not prepare,
edit, or in any other way draft the redistricting maps for the new boundaries which were passed
by the Legislature on July 19 and 20, 2011 and signed into law (2011 Wisconsin Acts 43 and 44)

by the Governor on August 9, 2011. GAB and the individual defendants have been sued because of their statutory responsibility to implement the districts that are now the law of the State. The defendants had no communications with the Legislature, prior to the enactment of the new redistricting maps on August 9, 2011, with respect to the boundaries of the new maps. Accordingly, the information and details provided in this Initial Rule 26(a) Disclosure are preliminary and to the best of the defendants' knowledge at this time. Defendants may amend this Disclosure as more discovery is completed.

Based upon the foregoing, the defendants make the following initial disclosures in accordance with the Court's Scheduling Order dated November 14, 2011:

1. Defendant Kevin J. Kennedy (GAB Director and General Counsel), Nathaniel E. Robinson (GAB Division Administrator, Elections Division), and other staff members or contracted employees, including but not limited to, Ross Hein, Sarah Whitt, David Grassel, Ann Oberle, and David Meyer, with respect to the implementation of the new redistricting maps.
2. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who were involved in drawing the redistricting maps which were signed into law on August 9, 2011, including without limitation, those individuals who reviewed the 2010 decennial census and assisted in determining the appropriate, constitutional boundaries for the state and Congressional districts as memorialized in Acts 43 and 44.
3. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who were involved in reviewing census and population data

from the 2010 decennial census to insure minimum population deviation for the new districts.

4. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who were involved in reviewing population and other data so as to preserve, to the extent possible and practicable, the core population of prior districts as well as communities of interest.
5. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who assisted the Legislature in insuring that the new redistricting maps, to the extent possible, kept wards and municipalities whole within legislative district boundaries and to the extent possible, recognized local government boundaries.
6. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who assisted the Legislature to insure that, if voters were shifted from odd to even senate districts, they were not unnecessarily and unconstitutionally disenfranchised by being deprived of the opportunity to vote.
7. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who reviewed the 2010 decennial census data and the previous districting maps to insure that the new districts were as geographically compact as practicable.
8. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who assisted the Legislature to prevent unnecessary and unconstitutional voter dilution of minority voters.

9. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who assisted the Legislature to insure that the new districts reflected communities of interest along with race and that, where possible, minority citizens comprising a numerical majority of the citizen voting age population.
10. Individuals who reside in, or are familiar with, challenged districts and/or pre-existing districts with respect to facts about those districts that are relevant to the constitutionality of the new redistricting maps.
11. Experts retained on behalf of the Legislature, and/or its various bodies, who assisted in preparing the redistricting maps.
12. Experts to be retained on behalf of the defendants who will assist in defending against the allegations in the First Amended Complaint.
13. Other individuals whose identity will become known through further discovery.

B. Potentially relevant documents.

Defendants may use the following documents to support their defenses in this matter.

1. Documents in the possession of the GAB with respect to the implementation of the new redistricting maps.
2. The approved district maps which were created (by the Legislature or the Courts) each decade from 1970 through 2002.
3. The decennial census from 1970 through 2010.
4. Documents which detail population growth and changes from 1970 through 2010, including, but not limited to, historical, minority-based, social, and other community of interest breakdowns.

5. Documents in the possession of the Legislature, and/or its various bodies, which were utilized to draft the 2011 redistricting maps.
6. Expert reports and analysis, if any, in the possession of the Legislature, and/or its various bodies, which were utilized to draft the 2011 redistricting maps.
7. The defendants reserve the right to supplement this response with any documents that become known through further discovery.

All of the documents listed above, which are in the possession of counsel for defendants, have been made available for inspection by the other parties at a time and place mutually agreed upon by all parties. Any copies that are requested as a result of any inspection may be obtained at the expense of the requestor at the usual State copying rate.

C. Calculation of damages.

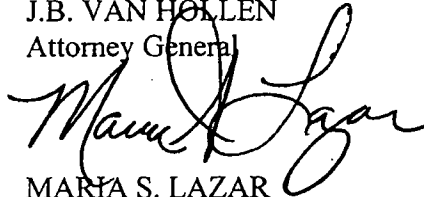
Monetary damages are not being sought in this action. Defendants reserve the right to present rebuttal evidence through their named fact and expert witnesses, as to any damages alleged by the plaintiffs.

D. Insurance agreements.

The State of Wisconsin is self-insured.

Dated this 16th day of November, 2011.

J.B. VAN HOLLEN
Attorney General



MARIA S. LAZAR
Assistant Attorney General
State Bar #1017150

Attorneys for Defendants

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EXHIBIT C

November 17, 2011

BY HAND DELIVERY AND EMAIL

Maria S. Lazar
Assistant Attorney General
Wisconsin Department of Justice
17 W. Main Street
Madison, Wisconsin 53703

Baldus et al. v. Brennan et al.
Case No. 11-CV-562

Dear Maria:

Yesterday, at 4 p.m., we exchanged the initial Rule 26 disclosures required by the Court's November 14, 2011 order. The Rule specifically requires disclosure of the "name...the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information...." The state's submission does not even attempt to meet the requirements of the order or the Rule.

Rather than providing "names" and other identifying information, the state provided only vague descriptions of nameless "individuals" involved in the redistricting process. The state obviously knows the identity of those individuals; they work for the state—either as employees or contractors; they have worked for or with the legislature on redistricting and with you personally and the Department of Justice on this litigation.

Please submit amended disclosures that comply with Rule 26 at your earliest convenience. If we do not receive adequate disclosures by Monday morning at 10:00 a.m., we will have no choice but to file a motion to compel that afternoon.

GODFREY & KAHN, S.C.



Rebecca Kathryn Mason

RKM:aeg

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